UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

CITY OF LAS CRUCES, et al., Plaintiffs, v. UNITED STATES OF AMERICA, et al., Defendants.	)	Case No. 2:17cv809 GJF

ANSWER AND COUNTERCLAIMS OF THE UNITED STATES

ANSWER

The United States, including the United States Department of Defense ("DOD") and the National Guard Bureau ("NGB"), answer the allegations in the Complaint filed by the City of Las Cruces ("the City") and Doña Ana County ("the County") as follows:

1. The allegations in Paragraph 1 characterize the Complaint and so require no response.

2. The United States admits the allegations in Paragraph 2 that the City is a local government that owns land within the City limits and provides drinking water to a substantial number of people, but the United States is without knowledge sufficient to admit or deny the remaining allegations in Paragraph 2 and so denies the same.

3. The United States admits the allegations in Paragraph 3 that the County is a local government that owns land within the City limits and provides drinking water, but the United States is without knowledge sufficient to admit or deny the remaining allegations in Paragraph 3 and so denies the same.

4. The United States is without knowledge sufficient to admit or deny the allegations in Paragraph 4 and so denies the same.

5. The United States is without knowledge sufficient to admit or deny the allegations in the first sentence of Paragraph 5 and so denies the same. With respect to the second sentence, the United States admits that the plume of contaminated groundwater at the time it was first characterized was approximately 1.8 miles long and .5 mile wide. The United States is without knowledge sufficient to admit or deny the allegation that there was any release of hazardous substances by the NGB or DOD that created this plume (in whole or in part) and so denies the same. The United States admits the allegations in the third sentence.

6. The United States admits the allegations in the first sentence of Paragraph 6. The United States admits the allegation in the second sentence that the United States Environmental Protection Agency ("EPA") has named Plaintiffs as a party responsible for cleanup costs at the Griggs and Walnut Ground Water Plume Superfund Site ("the Site"), but denies the allegation that EPA has also named DOD and NGB as parties responsible for the cleanup costs. The United States avers that DOD and NGB have been named as parties potentially responsible for the cleanup costs at the Site.

7. The United States admits the allegations in the first sentence of Paragraph 7. The allegation in the second sentence that Plaintiffs will continue to incur costs is speculative and so the United States can neither admit nor deny the allegation and so denies the same.

8. The United States admits the allegations in Paragraph 8.

9. The allegations in Paragraph 9 characterize the Complaint and so require no response.

10. Paragraph 10 contains a conclusion of law, not an allegation of fact, and so requires no response.

11. Paragraph 11 contains a conclusion of law, not an allegation of fact, and so requires no response.

12. Paragraph 12 contains a conclusion of law, not an allegation of fact, and so requires no response.

13. The first sentence of Paragraph 13 contains a conclusion of law, not an allegation of fact, and so requires no response. The second sentence is admitted.

14. The United States admits the allegations in Paragraph 14.

15. The United States admits the allegations in Paragraph 15.

16. The United States admits the allegations in Paragraph 16

17. The United States admits the allegation that DOD was at all relevant times, and still is, an agency of the United States. The United States further states that NGB is a component of DOD. The United States denies all remaining allegations in Paragraph 17.

18. With respect to the allegations in the first sentence, the United States admits that DOD is an agency of the United States, and states that the NGB is a component of DOD. The United States denies the remaining allegations in this sentence. The United States admits the allegations in the second sentence. The allegations in the third sentence are denied. The fourth sentence characterizes the Complaint and so requires no response.

19. The United States admits the allegations in the first three sentences of Paragraph 19. With respect to the fourth sentence, the United States admits that in 1962, the United States executed a contract with the State of New Mexico "for the construction of non-Armory facilities at [the] corner of Hadley and Solano, Las Cruces, New Mexico." Agreement No. 29-032-NG-

151. The remaining allegations in the fourth sentence of paragraph 19 characterize that contract, which speaks for itself and is the best evidence of its contents. To the extent that the allegations in the fourth sentence of Paragraph 19 are inconsistent with the cited document, those allegations are denied.

20. The United States admits the allegations in Paragraph 20.

21. The United States admits the allegations in the first sentence of Paragraph 21. The United States is without knowledge sufficient to admit or deny the allegation in the second sentence and so denies the same.

22. The United States denies the allegation in the first sentence of Paragraph 22 that the NGB owned or operated the Armory. The United States is without knowledge sufficient to admit or deny the remaining allegations in this sentence. The United States admits the allegations in the second sentence. The United States is without knowledge sufficient to admit or deny the allegations in the third sentence.

23. The United States admits the allegations in Paragraph 23.

24. The United States is without knowledge sufficient to admit or deny the allegations in Paragraph 24 and so denies the same.

25. The United States admits the allegations in Paragraph 25.

26. The United States admits the allegations in Paragraph 26.

27. The United States admits the allegations in the first sentence of Paragraph 27, but avers that most of the field investigations at the Site occurred in 2002. The second sentence contains a quote from an unidentified document. This document speaks for itself and is the best evidence of its contents. To the extent that the allegations in the fourth sentence of Paragraph 19 are inconsistent with the quoted document, those allegations are denied.

28. Paragraph 28 characterizes the content of EPA's Record of Decision. That document speaks for itself and is the best evidence of its own contents. To the extent that the allegations in Paragraph 28 are inconsistent with the cited document, those allegations are denied.

29. The United States admits the allegation in Paragraph 29.

30. The United States admits the allegation in Paragraph 30.

31. The United States admits the allegation in the first sentence of Paragraph 31 that Plaintiffs have undertaken significant investigative and remedial measures to treat contaminated ground water, but is without information sufficient to admit or deny the allegation that contamination was caused by the United States and so denies the same. The United States admits the allegation in the second sentence.

32. The United States admits the allegations in Paragraph 32.

33. The United States incorporates by reference its responses in Paragraphs 1-32 above.

34. Paragraph 34 characterizes a federal statute, which speaks for itself and is the best evidence of its content. To the extent that the allegations in Paragraph 28 are inconsistent with the cited document, those allegations are denied.

35. Paragraph 35 contains a conclusion of law, not an allegation of fact, and so requires no response.

36. Paragraph 36 contains a conclusion of law, not an allegation of fact, and so requires no response.

37. Paragraph 37 contains a conclusion of law, not an allegation of fact, and so requires no response.

38. Paragraph 38 contains a conclusion of law, not an allegation of fact, and so requires no response.

39. Paragraph 39 contains a conclusion of law, not an allegation of fact, and so requires no response.

40. Paragraph 40 contains a conclusion of law, not an allegation of fact, and so requires no response.

41. The United States admits the allegations in Paragraph 41 that Plaintiffs have incurred RI/FS costs, remedial design costs, and costs for construction, implementation, operation and maintenance of the remedial action. The remainder of Paragraph 41 characterizes Plaintiffs' anticipated case, and therefore requires no response.

42. Paragraph 42 contains a conclusion of law, not an allegation of fact, and so requires no response.

43. Paragraph 43 contains a conclusion of law, not an allegation of fact, and so requires no response.

44. The United States incorporates by reference its responses in Paragraphs 1-43 above.

45. Paragraph 45 contains a conclusion of law, not an allegation of fact, and so requires no response.

46. The allegations in Paragraph 46 are conclusions of law and a characterization of Plaintiffs' case and so require no response.

47. The allegation in Paragraph 47 regarding Plaintiffs' future actions is too speculative for the United States to admit or deny and so the United States denies the same.

48. Paragraph 48 contains a conclusion of law, not an allegation of fact, and so requires no response.

49. Paragraph 49 characterizes the relief requested by Plaintiffs and so requires no response.

GENERAL DENIAL

All allegations not expressly admitted are hereby denied.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief can be granted pursuant to 42 U.S.C. § 9607 to the extent that they have resolved any of their liability to the United States pursuant to an administrative settlement.

2. Plaintiffs' claims are barred in part by the statute of limitations.

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UNITED STATES' COUNTER CLAIMS AGAINST PLAINTIFFS

1. Pursuant to the provisions of Fed. R. Civ. Pro. 13, the United States of America, by and through the undersigned attorneys, and at the request of and on behalf of the EPA, asserts the following first and second counterclaims against the City and the County for cost recovery, the performance of the remedial action, and declaratory judgment with respect to the Site.

2. While preserving all of its defenses and expressly denying that it is liable to the Plaintiffs for any matter set forth in Plaintiffs' Complaint, pursuant to the provisions of Fed. R. Civ. Pro. 13, the United States of America by and through the undersigned attorneys, and at the request of and on behalf of the United States Department of Defense and National Guard Bureau, asserts the third counterclaim below for contribution against the City and the County.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to Sections 107 and 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Venue lies in the District of New Mexico under Section 113(b) of CERCLA, 42 U.S.C. 9613(b), and 28 U.S.C. § 1391, because these claims arise in connection with a release and threat of release of hazardous substances at the Site, which is located in this judicial district.

THE PARTIES

5. Defendant and Counterclaim Plaintiff is the United States.

6. Plaintiff and Counterclaim Defendant, the City of Las Cruces, New Mexico, is a political subdivision in the State of New Mexico and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7. Plaintiff and Counterclaim Defendant, Doña Ana County, New Mexico, is a political subdivision of the State of New Mexico and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

COUNTERCLAIMS ON BEHALF OF EPA

8. Pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, the United States seeks (a) the recovery of response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances at and from the Site; (b) the performance of response actions by the City and the County at the Site; and (c) pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), a declaratory judgment on the liability of the City and the County for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages in connection with the Site.

BACKGROUND

The Griggs & Walnut Ground Water Plume Superfund Site

9. The Site consists of property near the intersection of Griggs Avenue and Walnut Street in the City of Las Cruces, Doña Ana County, New Mexico, and extends underground to include parts of an aquifer that contains ground water contaminated with tetrachloroethylene. The Site, including this "plume" of contaminated ground water, is approximately 4,000 feet long by 1,800 feet wide and is located below the surface in the area between East Griggs Avenue and East Hadley Avenue, extending east to beyond Interstate 25 and west to beyond North Solano Avenue. The Site extends downward to a depth of approximately 635 feet below the ground surface. The Site also includes all suitable areas in very close proximity to the contamination that are necessary for the implementation of the response action to address the contamination.

Current land use at and near the Site includes a mix of commercial, public recreational, light industrial, and residential land uses.

10. Tetrachloroethylene (also known as tetrachloroethene, perchloroethene, perc, PCE, perchlor, or perclene) (hereinafter, "PCE"), is a chlorinated solvent that is often associated with dry cleaners or metal degreasing activities. When PCE is released into soil, it will evaporate into the atmosphere, or at higher concentrations, leach into the ground water. Human exposure to PCE can occur through ingestion of contaminated drinking water. Ingestion of PCE at high concentrations can cause severe nausea, vomiting, dizziness, headache, sleepiness, confusion, difficulty in speaking and walking, unconsciousness, and death. Prolonged exposure to PCE can damage the central nervous system, and the cardiovascular and reproductive systems.

11. Pursuant to Section 1412 of the Public Health Service Act, as amended by the Safe Drinking Water Act (Pub. L. 93-523), 42 U.S.C. §§ 300f-300j-26, EPA has established Maximum Contaminant Levels ("MCL") for drinking water, which constitute the maximum concentration level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. 40 CFR § 141.2. The established MCL for PCE is 5 µg/L (5 micrograms per liter). 40 CFR § 141.50.

Site History

12. PCE was first detected in the in City of Las Cruces' municipal water supply on August 8, 1993, in Well Number 21 and Well Number 27. The contaminant was discovered in samples collected by the Drinking Water Bureau ("DWB") of the New Mexico Environmental Improvement Division (now known as the New Mexico Environment Department, or "NMED")

during routine compliance monitoring in response to the requirements of the Safe Drinking Water Act. Initial sampling results indicated the presence of PCE at levels below the MCL.

13. On January 10, 1995, PCE was detected by the DWB in City of Las Cruces Well Number 18 at a concentration of 32.0 µg/L — well above the MCL of 5.0 µg/L. On September 26, 1996, after several sampling events showed fluctuating PCE concentrations in City of Las Cruces Well Number 18, the well was removed from the public distribution system.

14. From May through October 1997, the NMED Superfund Oversight Section performed a Site Assessment and a Preliminary Assessment of the conditions existing in the affected ground water in Las Cruces. On October 30, 1997, NMED submitted a report to EPA entitled "Preliminary Assessment, Las Cruces PCE, Doña Ana County, New Mexico" as a first step toward consideration of the site for the National Priority List ("NPL") under CERCLA. The NPL is the list, compiled by EPA pursuant to 42 U.S.C. § 9605, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response.

15. In June 1997, the NMED and the Doña Ana County Transportation Department ("DACTD"), as part of their efforts to address a fuel spill that occurred on East Griggs Avenue, detected PCE in a nearby monitoring well. Thereafter, NMED performed a Focused Site Inspection between February 1998 and July 2000, and detected PCE in soil vapor samples collected at the DACTD Facility and in ground water samples collected from 10 monitoring wells installed by NMED.

16. On the basis of this and other information, EPA listed the Site on the NPL on June 14, 2001 (66 Fed. Reg. 32235 (June 14, 2001)).

17. EPA identified three primary areas from which PCE contaminants were released in a report entitled "Identification of PCE Release Areas in the Vicinity of the Griggs and Walnut Ground Water Plume," Las Cruces, New Mexico (November 2003). EPA identified PCE in the soils at each of these three locations. One of the PCE release areas is an area near the current intersection of Hadley Avenue and Walnut Street, on property currently owned by the City and formerly occupied by the Crawford Municipal Airport. The second area is property along East Griggs Avenue, including the property currently located at 2025 East Griggs Avenue, which is currently owned and operated by Doña Ana County as a maintenance facility. The third area is property, currently located at 700 North Solano Drive, that includes the former location of an armory that was owned and operated by the New Mexico State Armory Board, but is currently owned by the City.

18. On April 20, 2005, EPA, the City and the County entered into an Administrative Order on Consent regarding the performance of a Remedial Investigation and Feasibility Study ("RI/FS") for the Site. In re: Griggs and Walnut Ground Water Plume, EPA Region 6 CERCLA Docket No. 06-06-04 (April 20, 2005). The Remedial Investigation serves as the mechanism for collecting data to characterize site conditions, determine the nature of the contaminants, assess risk to human health and the environment, and conduct treatability testing to evaluate the potential performance and cost of various treatment technologies. The Feasibility Study is the mechanism for the development, screening, and detailed evaluation of alternative remedial actions. Under this Administrative Order on Consent, the City and the County funded part of the RI/FS conducted by EPA.

19. Once the RI/FS was complete, on December 4, 2006, as part of its public participation responsibilities under section 300.430(f)(2) of the National Oil and Hazardous

Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300.430(f)(2), EPA released a Proposed Plan for the remediation of the contamination at the Site. EPA held a public meeting, on the record, regarding the Proposed Plan on December 7, 2006, and EPA received and responded to public comments as required by the NCP and CERCLA.

20. On June 18, 2007, EPA issued the Record of Decision ("ROD") for the Site, memorializing its remedy selection. Record of Decision, Griggs and Walnut Ground Water Plume Superfund Site, Las Cruces, New Mexico, U.S. EPA Region 6 (June 18, 2007) ("ROD"). The ROD included a Responsiveness Summary providing EPA's response to the public comments received on the Proposed Plan. Generally, the ROD calls for the contaminated ground water to be extracted from the contaminated aquifer and treated until it meets the MCL for PCE of 5µg/L established by regulation under the Safe Drinking Water Act.

21. On October 15, 2009, EPA issued a Unilateral Administrative Order ("UAO") to the City and the County, requiring the City and County to perform a remedial design for the Site remedy selected in the ROD. In re: Griggs and Walnut Ground Water Plume, U.S. EPA Docket No. 06-05-09 (October 15, 2009).

22. On February 14, 2011, EPA issued another UAO to the City and County, requiring the City and County to undertake the construction of the selected remedy as designed under the earlier UAO. In re: Griggs and Walnut Ground Water Plume, U.S. EPA Docket No. 06-02-11 (February 14, 2011). The February 14, 2011 UAO was rescinded before its effective date, and a new UAO calling for the construction of the selected remedy was issued on May 17, 2011. In re: Griggs and Walnut Ground Water Plume, U.S. EPA Docket No. 06-02-11 (May 17, 2011). The City and County completed construction of the ground water extraction and treatment system described in the ROD, pursuant to this UAO, in July 2012.

23. The City and County are currently operating the extraction and treatment system to remove PCE contamination from the ground water. On November 6, 2017, EPA issued another UAO to the City and County. In re: Griggs and Walnut Ground Water Plume, U.S. EPA Region 6 CERCLA Docket No. 06-05-17. This UAO requires the City and County to operate and maintain the ground water extraction and treatment system. Operation and maintenance work includes ground water sampling. The UAO requires the City and County to perform these response actions under EPA oversight, which will ensure consistency in the protection of the drinking water aquifer, until PCE concentrations in the aquifer meet the remediation goal of 5 µg/L selected in EPA's ROD.

Costs Incurred by the United States to Date

24. As of March 31, 2017, the United States has incurred approximately $7,359,858 in unreimbursed past response costs related to the Site, including costs incurred by NMED and reimbursed by EPA. The United States has incurred additional response costs since that date, and may incur additional response costs.

25. In letters to the City and County dated October 7, 2004, EPA demanded payment for its response costs for the Site.

STATUTORY BACKGROUND

26. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants, and for funding the costs of such abatement and related enforcement activities, which are known as "response" actions, 42 U.S.C. §§ 9604(a), 9601(25).

27. Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), provides in pertinent part:

> Whenever [ ] any hazardous substance is released or there is a substantial threat of such a release into the environment . . . the

> President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance . . . at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

28. Section 104(b)(1) of CERCLA, 42 U.S.C. § 9604(b)(1), provides in pertinent part:

> Whenever the President is authorized to act pursuant to subsection (a) of this section [i.e. 42 U.S.C. § 9604(a)] . . . he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances . . . involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this chapter.

29. The President has delegated his authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), to the Administrator of EPA to arrange for the cleanup of hazardous waste or to conduct investigations and studies as necessary to determine the need for, and extent of, such a cleanup.

30. CERCLA Section 106(a), 42 U.S.C. § 9606(a), provides in pertinent part:

> [W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat . . . .

31. Section 107(a) of CERCLA, U.S.C. § 9607(a), provides in pertinent part:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section [i.e. 42 U.S.C. § 9607(b)] -

> (1) the owner and operator of a . . . facility,
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, . . . at any facility . . . owned or operated by another party or entity and containing such hazardous substances, and
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release, which causes the incurrence of response costs, of a hazardous substance, shall be liable for-
> (A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan; . . . [and]
> (D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

32. The NCP provides the "procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants . . . ." 42 U.S.C. § 9605(a). The NCP is codified at 40 C.F.R. Part 300.

33. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), also provides that "[t]he amounts recoverable in an action under this Section shall include interest on the amounts recoverable under subparagraphs (A) through (D)."

34. Liability to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607, for all costs of response actions incurred and to be incurred by the United States related to the Site, is strict and joint and several.

35. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2), entitles the United States to obtain a declaratory judgment on liability for future response costs: "[T]he court shall

enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

GENERAL ALLEGATIONS

36. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

37. The City is the current owner of the PCE release area at the Site that is near the current intersection of East Hadley Avenue and North Walnut Street, and which was formerly occupied by the Crawford Municipal Airport. Subject to a reasonable opportunity for further investigation and discovery, the City took ownership of this property in approximately 1941 when it was in an undeveloped state and before the airport was constructed and commenced operations there. Subject to a reasonable opportunity for further investigation and discovery, there were disposals, releases and/or threatened releases of hazardous substances on this property, within the meaning of Sections 101(22), 101(29) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), (29), and 9607(a), during the City's period of ownership.

38. The City is also the current owner of the PCE release area at the Site that is located at 700 North Solano Drive. This property includes the former location of an armory that was owned and operated by the New Mexico State Armory Board. Subject to a reasonable opportunity for further investigation and discovery, the City owned this property at various times between 1940 and the present, including during years in which the armory was in operation. Subject to a reasonable opportunity for further investigation and discovery, there were disposals, releases and/or threatened releases of hazardous substances on this property, within the meaning of Sections 101(22), 101(29) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), (29), and 9607(a), during the City's period of ownership.

39. The City is a person that is an "owner or operator" of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

40. The City is a person that was an "owner or operator" of a facility "at the time of disposal" within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

41. The County is the current owner of the PCE release area that is located along East Griggs Avenue, including the property at 2025 East Griggs Avenue, which is currently operated by the County and used by the County's Fleet Management Department. Subject to a reasonable opportunity for further investigation and discovery, the County took ownership of this property in approximately 1941. Subject to a reasonable opportunity for further investigation and discovery, there were disposals, releases and/or threatened releases of hazardous substances on this property, within the meaning of Sections 101(22), 101(29) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), (29), and 9607(a), during the County's period of ownership.

42. The County is a person that is an "owner or operator" of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

43. The County was a person that was an "owner or operator" of a facility "at the time of disposal" within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

44. There have been releases or threatened releases of hazardous substances, including PCE, into the environment at or from the Site, within the meaning of Sections 101(14), 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22) and 9607(a).

45. As a result of the releases or threatened releases of a hazardous substance at or from the Site, EPA has incurred and will continue to incur response costs, within the meaning of Sections 101(25) and 107 of CERCLA, 42 U.S.C. §§ 9601(25) and 9607, to respond to the releases or threatened releases of hazardous substances at or from the Site.

46. At least $7,359,858, plus interest, of EPA's response costs incurred at the Site remain unreimbursed.

47. The response costs incurred by EPA in connection with the Site were incurred in a manner not inconsistent with the National Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300.

48. The City and the County are jointly and severally liable to the United States for all costs of response actions incurred and to be incurred by the United States related to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

FIRST CLAIM FOR RELIEF

49. Paragraphs 1 through 48 are realleged and incorporated herein by reference.

50. The President, through his delegatee, the Superfund Division Director of EPA Region 6, has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release or threatened release of hazardous substances at or from the Site.

51. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate a danger or threat at the Site.

52. EPA selected a remedy to abate the dangers and/or threats caused by contaminants in the Site's ground water, which is identified in the Site's Record of Decision.

53. Pursuant to Section 106(a) of CERCLA, 42, U.S.C. § 9606(a), the City and County are liable to perform the remedies identified in the Record of Decision, which are necessary to abate the endangerment to the public health or welfare or the environment at the Site.

SECOND CLAIM FOR RELIEF

54. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

55. Pursuant to Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), the City and County are liable to the United States for all costs incurred and to be incurred by the United States in connection with Site, including enforcement costs and interest on all such costs.

56. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment on the liability of the City and the County for response costs or damages that will be binding on any subsequent action.

THIRD CLAIM FOR RELIEF

57. Paragraphs 1 through 56 are incorporated herein by reference.

58. This is a civil action in which the City and the County allege claims against the United States for contamination at the Site, which contamination allegedly has caused and/or will cause the City and the County to incur response costs under 42 U.S.C. § 9607(a)(4)(B). Therefore, 42 U.S.C. § 9613(f)(1) authorizes the United States to seek contribution herein.

59. If the City and the County are able to establish that the United States is liable in this action, the Court should allocate the response costs sought by the City and the County among all liable parties using such equitable factors as the Court determines are appropriate, under 42 U.S.C. § 9613(f)(1), and grant appropriate declaratory relief under 42 U.S.C. § 9613(g)(2) and 28 U.S.C. § 2201.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that this Court:

A. Order the City and County to perform the remaining components of the remedy as set forth in the Record of Decision for the Site;

B. Enter judgment in favor of the United States and against the City and County, jointly and severally, for reimbursement of all costs incurred and paid by the United States in responding to releases or threatened releases of hazardous substances at the Site, plus the costs of investigation and cost recovery related to such releases and this suit, in an exact amount to be proven at trial, plus pre-judgment interest;

C. Enter a declaratory judgment in favor of the United States holding the City and County liable, jointly and severally, for all additional costs incurred or to be incurred by the United States in connection with the Site;

D. Award the United States its enforcement costs, including attorney fees, costs, and disbursements in this action; and

E. Enter judgment against the City and County on all claims against the United States and in favor of the United States, dismiss with prejudice all claims asserted in the complaint; and deny all of the prayers for relief sought by the City and County against the United States;

F. In the event the Court finds the United States to be a liable party, for the purposes of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), allocate shares of response costs that appropriately reflect the equitable share of every liable party to this action, using such equitable factors as the Court determines to be appropriate, and grant appropriate declaratory relief; and

G. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on November 14, 2017, via the Court's ECF system upon all counsel of record.

Eileen T. McDonough